IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 7TH DECEMBER 2007 / 16TH AGRAHAYANA 1929

CRL.A.No. 868 of 2004

SC.81/2000 OF ADDL.SESSIONS COURT, KOTTAYAM
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APPELLANT: COMPLAINANT

STATE OF KERALA, REP.BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI. K.C. SANTHOSHKUMAR

RESPONDENTS: ACCUSED
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1. KUTTAPPAN S/O. PAPPACHAN, THEVARKUNNEL HOUSE, NEAR L.P.SCHOOL, INCHIYANI, VATAKKAVU, MUNDAKKAYAM.

2. PAPPACHAN S/O. NARAYANAN, THEVARKUNNEL HOUSE, NEAR L.P.SCHOOL, INCHIYANI, VATTAKKAVU, MUNDAKKAYAM.

BY ADV. SRI.SUNIL CYRIAC

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 07/12/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

Crl.A.No.868 OF 2004

Dated 7th December, 2007

JUDGMENT

Koshy,J.

This appeal is filed by the State against the acquittal of the accused in S.C.No.81/2000 on the file of the Additional Sessions Court, Kottayam. Two accused faced trial for murder of one Ramachandran. Second accused was the father of the first accused. At the time of commission of the offence itself second accused was aged 75 and he died in the course of trial. Case against him is abated. The allegation of the prosecution was that on account of the previous enmity with deceased Ramachandran and in furtherance of the common intention of the accused, caught hold of him on 28.5.99 at about 6.45 p.m. in front of Vattakkavu L.P.School in Inchiyani – Vattakkavu road. The second accused caught hold of him on his waist fold and first accused stabbed him with a knife on his abdomen, both of them knowing that the act will result in his death and thereby both of them have committed the offences punishable under sections 341 and 30 read with section 34 of the Indian Penal Code.

2. The defence of the first accused as revealed from 313 statement was that while he was coming to his house, he heard the sound

of his father shouting that he was being killed and when he saw his father there was bleeding injury on his head and deceased Ramachandran was standing near him with a broken umbrella raising his hand with that umbrella to beat the second accused again. He got frightened and he took his father to hospital. Then he did not remember what happened. Second accused in 313 statement took a stand that the deceased Ramachandran came to his shop asking where his son Kuttappan and attempted to damage his shop. Deceased beat him on his head and caused injury with an umbrella and in that the umbrella was broken. Due to the hitting he fell down. The deceased shouted that if his son was there, he would kill him and thereafter he was not remembering anything. During the trial, the defence filed Crl.M.P.2118/2002 to summon the Superintendent of District Hospital, Kottayam to produce the case sheet of the second accused. The same was allowed and it was marked through PWs 9, 10 and 11. Exts. P6 to P9 were marked through them. Motive pleaded was that three years ago there was an altercation and fight between PW4 Varghese and first accused in which the first accused beat PW4 Varghese and in that deceased Ramachandran had intervened and first accused left the place stating that he would show him a lesson. Thereafter first accused eloped with the daughter of the employer of deceased Ramachandran and he was away from the place for some time and just some days prior to the incident he came back to his

house at Vattakkavu. The trial court found that the fight between PW4 and first accused that occurred three years ago may not be the real reason. But, at the same time, we are of the view that eloping of the daughter of the employer of deceased Ramachandran may be a motive for the deceased to attack the accused. It has also come out in evidence that on the basis of the disclosure made by A1, MO1 knife was recovered as per Ext.P4 seizure mahazar.

3. PW12, Assistant Professor of Forensic Medicine attached to the Medical College, Kottayam conducted postmortem examination and Ext.P10 postmortem certificate was issued which shows the following injuries:

> "B.INJURIES (Ante-mortem)
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> 1) Incised penetrating wound 4 x 2 cm. obliquely placed on the outer aspect of left side of the abdomen. Its lower inner end was sharply cut which was 12 cm. above the top of hip bone and 12 cm. outer to the midline. The other end showed a splitting of tissues. The wound entered the abdominal cavity and piercing through the stomach it terminated in the pancreas. The track of the wound was directed backwards, downwards and to the right for a total minimum depth of 8cm. The coils of intestine were protruding out through the wound and it showed two cut 1 x 0.3cm. And 0.2 x 0.3 cm. respectively. The abdominal cavity contained 1.5 litres of blood with clots.

2) Incised wound 1 x 0.3 x 0.3 cm. obliquely placed on the left side of chin 2 cm. below the corner of mouth.

3) Abrasion 2 x 1 cm. on the front of right knee.

4) Abrasion 2 x 1 cm. on the front of left knee."

Postmortem certificate shows that death was caused due to the stab injury to the abdomen and deceased has consumed toddy just prior to the incident. Ext.P11 chemical analysis report shows that the blood of the deceased contained 69mgms ethyl alcohol per 100ml of blood. Evidence of PWs 1 to 3 coupled with recovery of MO1 knife was relied on by the prosecution for entering the conviction.

4. PW1 deposed in accordance with the prosecution case. On the fateful day at 6.40 p.m. when deceased Ramachandran was proceeding towards his house first accused stapped him, picked up a quarrel with him and in that there was some tussle between them and on seeing this the second accused reached there and thereafter there was tussle between the deceased, first accused and second accused . According to PW1, the second accused caught hold of the waist fold of deceased Ramachandran preventing him from moving away and second accused stabbed him with MO1 knife. But, evidence of PWs2 and 3 will not tally with the deposition of PW1. Evidence of PWs 1, 2

and 3 will not show that any injury was caused to the second accused. But, the wound certificate (Ext.P7) shows that A2 was admitted in District Hospital, Kottayam and he suffered the following injuries:

> "1. Lacerated injury Rt. Forearm (back). 6Cm x 2cm.
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> 2. Lacerated injury scalp anteriorly 5cm x 1cm."

He was admitted as an inpatient. History and alleged cause of injury was "കമ്പിവടിവച്ച് അടിച്ചതിൽ വച്ച് at 7 p.m. on 28.5.99 at ഇഞ്ചിയാനി." Prosecution suppressed the injuries on A2 and even the wound certificate Exts.P7 and P9 case sheet were produced only when defence filed a petition to summon the above documents. But, when PW3 was examined an attempt was made by the public prosecutor and asked the question whether A2 fell down during the fight and PW3 answered that somebody fell down and he could not say as to who exactly that was. Evidence would show that there was a fight, but, if A2 was catching hold of the deceased and A1 stabbed the deceased there is no possibility of A2 falling down. Considering the evidence the trial court came to the conclusion that the alleged occurrence witnesses were not telling the correct facts. In any event, origin of the incident was not proved. It is not disputed that earlier there was altercation and fight between the accused and PW4 and the

deceased intervened it and thereafter the first accused eloped with the daughter of the employer of the deceased. It is natural that there was grudge between them. When deceased attacked A2, A1 rushed there for helping and according to the court the incident occurred at that time. We are of the opinion that defence pleading is also a probable one and trial court who has seen the demeanour of the witnesses has found that defence witness is more probable. After careful consideration of the evidence trial court found as follows:

> "43. In this case if the defence varsion has to be accepted then the 2nd accused has got a right of private defence to save his father who was attacked by the deceased with the iron portion of the umbrella and he had sustained a bleeding injury on his head and hand. Further the way in which the umbrella was seen in Court also probabilises the case of the defence that that could have been used by the deceased for beating the 2nd accused which has resulted in some bleeding injury on the head and hand of the 2nd accused and further the evidence of PWs 1 to 3 also will go to show that till the stab was made the tussle could not end. So that also probabilise the case of the defence except by making a stab the first accused could not relieve the 2nd accused from the tussle. Further the place where the injury was inflicted also shows that it was on the left side of the abdomen 12 c.m. Above the top of hip bone. So it cannot be said that at the time when the first accused was inflicting that injury, he may not be having the knowledge that it will be so serious so as to result in the death of the deceased and it will go so deep as seen in the postmortem certificate. So under the circumstance it also cannot be said that the 1st accused had exceeded his private defence in saving his father.

> 44. In view of the discussion made above and from the circumstance of the case, it can be safely concluded that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt and they have suppressed the material aspects as to the genesis and origin of the incident and they have not placed the true version of the incident before the Court and the possibility of the first accused exercising his private defence to save his father from the deceased cannot be ruled out and this benefit must be given to the accused.
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> 45. It is settled law that if two versions are possible regarding the same incident and if one version which is in favour of the accused, then that version of the incident has to be accepted and that benefit must be given to the accused. In this case considering the overall circumstance of the case the defence put forward by the accused appears to be more probable than the case of the prosecution regarding the manner in which the incident had happened and that benefit must be given to the accused. So it can be safely concluded that the prosecution has failed to prove that the accused have committed the offence punishable U/ss. 341 & 302 r/w. 34 I.P.C. beyond reasonable doubt and the accused are entitled to get acquittal of the charge levelled against them giving them the benefit of doubt. The points are answered against the prosecution and in favour of the accused."

We fully agree with the conclusion of the trial court. In any event, we are of the view that it cannot be stated that the view taken by the trial court is not a possible one. It has been consistently held by the Apex Court that even if another view is possible, if the view taken by the trial court is a possible one, the appellate court shall not interfere if there is no perversity or patent illegality in the findings (See

Samghaji Hariba Patil v. **State of Karnataka** (AIR 2007 SC 28). Here, there is no perversity of findings or patent illegality. No sufficient grounds are made out for interfering with the judgment of the trial court acquitting the accused.

The appeal is dismissed.

J.B.KOSHY
JUDGE

K.HEMA
JUDGE

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